



**6560-50-P**

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

**[EPA-R04-OAR-2016-0247; FRL-9950-82-Region 4]**

**Air Plan Approval; South Carolina;**

**Prong 4—2008 Ozone, 2010 NO<sub>2</sub>, SO<sub>2</sub>, and 2012 PM<sub>2.5</sub>**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is conditionally approving the portions of revisions to the South Carolina State Implementation Plan (SIP), submitted by the South Carolina Department of Health and Environmental Control (SC DHEC), addressing the Clean Air Act (CAA or Act) visibility transport (prong 4) infrastructure SIP requirements for the 2008 8-hour Ozone, 2010 1-hour Nitrogen Dioxide (NO<sub>2</sub>), 2010 1-hour Sulfur Dioxide (SO<sub>2</sub>), and 2012 annual Fine Particulate Matter (PM<sub>2.5</sub>) National Ambient Air Quality Standards (NAAQS). The CAA requires that each state adopt and submit a SIP for the implementation, maintenance, and enforcement of each NAAQS promulgated by EPA, commonly referred to as an “infrastructure SIP.” Specifically, EPA is conditionally approving the prong 4 portions of South Carolina’s July 17, 2008, 8-hour Ozone infrastructure SIP submission; April 30, 2014, 2010 1-hour NO<sub>2</sub> infrastructure SIP submission; May 8, 2014, 2010 1-hour SO<sub>2</sub> infrastructure SIP submission; and December 18, 2015, 2012 annual PM<sub>2.5</sub> infrastructure SIP submission. All other applicable infrastructure requirements for these SIP submissions have been or will be addressed in separate rulemakings.

**DATES:** This rule will be effective [insert date 30 days after date of publication in the **Federal Register**].

**ADDRESSES:** EPA has established a docket for this action under Docket Identification No. EPA-R04-OAR-2016-0247. All documents in the docket are listed on the [www.regulations.gov](http://www.regulations.gov) web site. Although listed in the index, some information may not be publicly available, i.e., Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through [www.regulations.gov](http://www.regulations.gov) or in hard copy at the Air Regulatory Management Section, Air Planning and Implementation Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW, Atlanta, Georgia 30303-8960. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday 8:30 a.m. to 4:30 p.m., excluding federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Sean Lakeman of the Air Regulatory Management Section, Air Planning and Implementation Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW, Atlanta, Georgia 30303-8960. Mr. Lakeman can be reached by telephone at (404) 562-9043 or via electronic mail at [lakeman.sean@epa.gov](mailto:lakeman.sean@epa.gov).

## **SUPPLEMENTARY INFORMATION:**

### **I. Background**

By statute, SIPs meeting the requirements of sections 110(a)(1) and (2) of the CAA are to be submitted by states within three years after promulgation of a new or revised NAAQS to provide for the implementation, maintenance, and enforcement of the new or revised NAAQS. EPA has historically referred to these SIP submissions made for the purpose of satisfying the requirements of sections 110(a)(1) and 110(a)(2) as “infrastructure SIP” submissions. Sections 110(a)(1) and (2) require states to address basic SIP elements such as the requirements for monitoring, basic program requirements, and legal authority that are designed to assure attainment and maintenance of the newly established or revised NAAQS. More specifically, section 110(a)(1) provides the procedural and timing requirements for infrastructure SIPs. Section 110(a)(2) lists specific elements that states must meet for the infrastructure SIP requirements related to a newly established or revised NAAQS. The contents of an infrastructure SIP submission may vary depending upon the data and analytical tools available to the state, as well as the provisions already contained in the state’s implementation plan at the time in which the state develops and submits the submission for a new or revised NAAQS.

Section 110(a)(2)(D) has two components: 110(a)(2)(D)(i) and 110(a)(2)(D)(ii). Section 110(a)(2)(D)(i) includes four distinct components, commonly referred to as “prongs,” that must be addressed in infrastructure SIP submissions. The first two prongs, which are codified in section 110(a)(2)(D)(i)(I), are provisions that prohibit any source or other type of emissions activity in one state from contributing significantly to nonattainment of the NAAQS in another

state (prong 1) and from interfering with maintenance of the NAAQS in another state (prong 2). The third and fourth prongs, which are codified in section 110(a)(2)(D)(i)(II), are provisions that prohibit emissions activity in one state from interfering with measures required to prevent significant deterioration of air quality in another state (prong 3) or from interfering with measures to protect visibility in another state (prong 4). Section 110(a)(2)(D)(ii) requires SIPs to include provisions ensuring compliance with sections 115 and 126 of the Act, relating to interstate and international pollution abatement.

The prong 4 portions of South Carolina's infrastructure SIP submissions for the 2008 8-hour Ozone, 2010 1-hour NO<sub>2</sub>, 2010 1-hour SO<sub>2</sub>, and 2012 annual PM<sub>2.5</sub> NAAQS cite to the State's regional haze SIP as satisfying prong 4 requirements.<sup>1</sup> However, the State may not currently rely on its regional haze SIP to satisfy these requirements because EPA has not yet fully approved South Carolina's regional haze SIP as it relies on the Clean Air Interstate Rule (CAIR) to satisfy the nitrogen oxides (NO<sub>x</sub>) and SO<sub>2</sub> Best Available Retrofit Technology (BART) requirements for the CAIR-subject electric generating units (EGUs) in the State and the requirement for a long-term strategy sufficient to achieve the state-adopted reasonable progress goals.<sup>2</sup> Therefore, on April 19, 2016, South Carolina submitted a commitment letter to EPA requesting conditional approval of the prong 4 portions of the aforementioned infrastructure SIP revisions.

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<sup>1</sup> The April 30, 2014, 2010 1-hour NO<sub>2</sub> submission; May 8, 2014, 2010 1-hour SO<sub>2</sub> submission; and December 18, 2015 also cite to the State's December 2012 regional haze progress report.

<sup>2</sup> CAIR, promulgated in 2005, required 27 states and the District of Columbia to reduce emissions of NO<sub>x</sub> and SO<sub>2</sub> that significantly contribute to, or interfere with maintenance of, the 1997 NAAQS for fine particulates and/or ozone in any downwind state. CAIR imposed specified emissions reduction requirements on each affected State, and established several EPA-administered cap and trade programs for EGUs that States could join as a means to meet these requirements.

In its commitment letter, South Carolina commits to satisfy the prong 4 requirements for the 2008 8-hour ozone NAAQS, 2010 1-hour NO<sub>2</sub> NAAQS, 2010 1-hour SO<sub>2</sub> NAAQS, and 2012 PM<sub>2.5</sub> NAAQS by providing a SIP revision within one year of EPA's final conditional approval of the prong 4 portions of the infrastructure SIP revisions and provides an anticipated schedule for these revisions. Specifically, South Carolina commits "to provide to the EPA a SIP revision that adopts provisions for participation in the Cross-State Air Pollution Rule ("CSAPR") annual NO<sub>x</sub> and annual SO<sub>2</sub> trading programs, including annual NO<sub>x</sub> and annual SO<sub>2</sub> budgets. Any adopted budgets would be at least as stringent as the budgets codified for South Carolina at 40 CFR 97.710(a) (annual SO<sub>2</sub> group 2 trading budgets) and 40 CFR 97.410(a) (annual NO<sub>x</sub> trading budgets), as promulgated in the Federal Register notice of June 12, 2012 (77 Fed. Reg. 34,830). We will rely on this SIP revision adopting such budgets to submit a concurrent SIP revision that will satisfy the visibility requirements of section 110(a)(2)(D)(i)(II) and EPA's corresponding guidance on those requirements. We commit to provide this concurrent SIP revision within the one-year period described above. This concurrent SIP revision will rely on either an analysis provided therein showing that emissions from sources in South Carolina will not interfere with the attainment of the reasonable progress goals of other states or on a fully approved regional haze SIP relying on CSAPR. If the concurrent SIP revision relies on a fully approvable regional haze SIP, we commit to provide this regional haze SIP to EPA within the one year period described above."

If South Carolina meets its commitment within one year of final conditional approval, the prong 4 portions of the conditionally-approved infrastructure SIP submissions will remain a part of the SIP until EPA takes final action approving or disapproving the new SIP revision(s).

However, if the State fails to submit these revisions within the one-year timeframe, the conditional approval will automatically become a disapproval one year from EPA's final conditional approval and EPA will issue a finding of disapproval. EPA is not required to propose the finding of disapproval. If the conditional approval is converted to a disapproval, the final disapproval triggers the federal implementation plan requirement under CAA section 110(c).

In a notice of proposed rulemaking (NPRM) published on June 8, 2016 (81 FR 36842), EPA proposed to conditionally approve the prong 4 portions of the aforementioned infrastructure SIP submissions. The NPRM provides additional detail regarding the rationale for EPA's action, including further discussion of the Prong 4 requirements and the basis for South Carolina's commitment letter. Comments on the proposed rulemaking were due on or before July 8, 2016. EPA received no adverse comments on the proposed action.

## **II. Final Action**

EPA is conditionally approving the prong 4 portions of South Carolina's July 17, 2008, 8-hour Ozone infrastructure SIP submission; April 30, 2014, 2010 1-hour NO<sub>2</sub> infrastructure SIP submission; May 8, 2014, 2010 1-hour SO<sub>2</sub> infrastructure SIP submission; and December 18, 2015, 2012 annual PM<sub>2.5</sub> infrastructure SIP submission. All other applicable infrastructure requirements for these SIP submissions have been or will be addressed in separate rulemakings.

## **III. Statutory and Executive Order Reviews**

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable federal regulations. *See* 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices,

provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- is not a “significant regulatory action” subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and

- does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this action does not have Tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). The Catawba Indian Nation Reservation is located within the State of South Carolina. Pursuant to the Catawba Indian Claims Settlement Act, South Carolina statute 27-16-120, “all state and local environmental laws and regulations apply to the [Catawba Indian Nation] and Reservation and are fully enforceable by all relevant state and local agencies and authorities.” However, EPA has determined that because this rule does not have substantial direct effects on an Indian Tribe because, as noted above, this action is not approving any specific rule, but rather conditionally approving South Carolina’s already approved SIP meets certain CAA requirements. EPA notes this action will not impose substantial direct costs on Tribal governments or preempt Tribal law.

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the Federal Register. A major rule cannot take effect until 60 days after it is published in the Federal Register. This action is not a “major rule” as defined by 5 U.S.C. 804(2).



Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by [FEDERAL REGISTER OFFICE: insert date 60 days from date of publication of this document in the Federal Register].

Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements.

*See* section 307(b)(2).

**List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate Matter, Sulfur dioxide, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: August 8, 2016.

Heather McTeer Toney  
Regional Administrator,  
Region 4.

40 CFR part 52 is amended as follows:

**PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS**

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

**Subpart PP—South Carolina**

2. Section 52.2127 is added to read as follows:

**§ 52.2127 Conditional approval.**

South Carolina submitted a letter to EPA on April 19, 2016, with a commitment to address the State Implementation Plan deficiencies regarding requirements of Clean Air Act section 110(a)(2)(D)(i)(II) related to interference with measures to protect visibility in another state (prong 4) for the 2008 8-hour Ozone, 2010 1-hour NO<sub>2</sub>, 2010 1-hour SO<sub>2</sub>, and 2012 annual PM<sub>2.5</sub> NAAQS. EPA conditionally approved the prong 4 portions of South Carolina's July 17, 2008, 8-hour Ozone infrastructure SIP submission; April 30, 2014, 2010 1-hour NO<sub>2</sub> infrastructure SIP submission; May 8, 2014, 2010 1-hour SO<sub>2</sub> infrastructure SIP submission; and December 18, 2015, 2012 annual PM<sub>2.5</sub> infrastructure SIP submission in an action published in the Federal Register on August 22, 2016. If South Carolina fails to meet its commitment by August 22, 2017, the conditional approval will automatically become a disapproval on that date and EPA will issue a finding of disapproval.

[FR Doc. 2016-19537 Filed: 8/19/2016 8:45 am; Publication Date: 8/22/2016]